

ORDINANCE NO. O-15.0802A

AN ORDINANCE AMENDING THE SUBDIVISION ORDINANCE O-050502S TO FURTHER AMEND AND REPEAL THE EXISTING ADEQUATE FACILITIES/ROUGH PROPORTIONALITY ORDINANCE O-051201F, CORRECTING REQUIREMENTS AND REGULATIONS TO PROVIDE FOR ADEQUATE FACILITIES AND MINIMUM STANDARDS FOR PUBLIC FACILITIES AND FOR THE TIMING OF DEDICATION AND CONSTRUCTION OF PUBLIC FACILITIES; ESTABLISHING REQUIREMENTS RELATING TO ROUGH PROPORTIONALITY DETERMINATIONS FOR ALL PLAT AND DEVELOPMENT APPLICATIONS WHICH IMPOSE EXACTION REQUIREMENTS; PROVIDING FOR DEFINITIONS; PROVIDING FOR PROCEDURES; ESTABLISHING PROCEDURES FOR APPEAL THEREOF; PROVIDING THAT THIS ORDINANCE SHALL BE CUMULATIVE OF ALL ORDINANCES; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A SAVINGS CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City has adopted regulations for the development and subdivision of land within the City; and

WHEREAS, the City desires to assure both that development impacts are mitigated through contributions of rights-of-way, easements and construction of capital improvements, and that a subdivision contribute not more than its proportionate share of such costs; and

WHEREAS, the City Council has held a public hearing with respect to the amendment of the Subdivision Ordinance as required by law;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF AURORA, TEXAS:

SECTION 1.

The Subdivision Ordinance of the City of Aurora is hereby amended by the addition of the following provisions:

PURPOSE AND POLICY

- (a) These subdivision regulations of the City are designed and intended to achieve the following purposes and shall be administered so as to:

- (1) promote the health, safety, morals and general welfare of the community and the safe, orderly and healthful development of the City;
- (2) establish adequate policies and procedures to guide development of the City and its extraterritorial jurisdiction;
- (3) provide for the establishment of minimum specifications for construction and engineering design criteria for public infrastructure improvements to maintain land values, reduce inconveniences to residents of the area, and to reduce related unnecessary costs to the City for correction of inadequate facilities that are designed to serve the public;
- (4) ensure that development of land and subdivisions shall be of such nature, shape and location that utilization will not impair the general welfare;
- (5) ensure against the dangers of fires, floods, erosion, landslides, or other such menaces;
- (6) preserve the natural beauty and topography of the City and to ensure appropriate development with regard to these natural features;
- (7) realistically and harmoniously relate new development of adjacent properties;
- (8) provide the most beneficial circulation of traffic throughout the City, having particular regard to the avoidance of congestion in the streets and highways, and pedestrian traffic movements; and to provide for the proper location and width of streets;
- (9) ensure that public facilities for water supply, drainage, disposal of sanitary and industrial waste, whether liquid or solid, and parks are available for every building site and with adequate capacity to serve the proposed subdivision before issuance of a certificate of occupancy or release of utility connections or final inspection within the boundaries of the plat;
- (10) assure that new development adequately and fairly participates in the dedication and construction of public infrastructure improvements that are necessitated by or attributable to the development or that provide value or benefit that makes the development feasible;
- (11) help prevent pollution, assure the adequacy of drainage facilities, manage storm water runoff, safeguard the water table, and encourage the wise use and management of natural resources throughout the City and its extraterritorial jurisdiction in order to preserve the integrity, stability, and beauty of the community and the value of the land; and

- (12) provide for open spaces through the most efficient design and layout of the land, while preserving the land use intensity as established in the Zoning Ordinance of the City.
- (b) To carry out the purposes hereinabove stated, it is declared to be the policy of the City to guide and regulate the subdivision and development of land in such a manner as to promote orderly growth both within the City and where applicable, within its extraterritorial jurisdiction.
- (c) Land must not be platted or developed until proper provision has been made for adequate public facilities for roadways, drainage, water, wastewater, public utilities, capital improvements, parks, recreation facilities, and rights-of-way for streets.
- (d) Proposed plats or subdivisions which do not conform to the policies and regulations shall be denied, or, in lieu of denial, disapproved conditioned on conformance with conditions.
- (e) There shall be an essential nexus between the requirement to dedicate rights-of-way and easements and/or to construct public works improvements in connection with a new subdivision and the need to offset the impacts on the City's public facilities systems created by such new development.

ADEQUATE PUBLIC FACILITIES

- (a) Land proposed to be subdivided must be served adequately by essential public facilities and services, including water and wastewater facilities, roadway and pedestrian facilities, storm water management and drainage facilities and park facilities. An application for a plat or development may be denied unless adequate public facilities necessary to support and serve the development exist or provision has been made for the facilities, whether the facilities are to be located within the property being platted or offsite.
- (b) It is necessary and desirable to provide for dedication of rights-of-way and easements for public works improvements to support new development at the earliest stage of the development process.
- (c) The City desires to assure both that impacts of new development are mitigated through contributions of rights-of-way, easements and construction of capital improvements, and that a new development be required to contribute not more than its proportionate share of such costs.
- (d) Proposed public works improvements serving new development shall conform to and be properly related to the public facilities elements of the City's adopted Master Plan, other adopted master plans for public facilities and services, and applicable

capital improvements plans, and shall meet the service levels specified in such plans.

MINIMUM STANDARDS

- (a) The standards established in this Ordinance for dedication and construction of public works improvements and infrastructure are based upon engineering studies and historical usages and demands by different categories of development. These regulations identify certain minimum requirements and sizes for utilities, roadways, parks and other facilities that the City Council has determined to be necessary in order to provide the minimum level of service necessary to protect or promote the public health, safety, and welfare and to assure the quality of life currently enjoyed by the citizens of Aurora. It is the intent of these regulations that no development occurs until and unless these minimum levels of service are met. Therefore, each subdivision in the City shall be required to dedicate, construct and/or upgrade required facilities and infrastructure to a capacity that meets these minimum levels.
- (b) For each category of public infrastructure, a minimum standard of infrastructure, and in some cases, service level, has been developed based upon historic studies and construction projects of the City and other cities. These minimum standards take into consideration the soil conditions and topographic configuration of the City, the use and impact analyses of the North Central Texas Council of Governments in developing standard specifications for public works installation, and other historical use and performance experiences of the City that reflect the minimum level of facilities and services that must be built to meet the health, safety and welfare of the citizens of Aurora.
- (c) In order to maintain prescribed levels of public facilities and services for the health, safety and general welfare of its citizens, the City may require the dedication of easements and rights-of-way for or construction of on-site or off-site public works improvements for water, wastewater, road, drainage or park facilities to serve a proposed subdivision, or require the payment of fees in lieu thereof. If adequate levels of public facilities and services cannot be provided concurrent with the schedule of development proposed, the City may deny the subdivision until the public facilities and services can be provided, or require that the development be phased so that the availability and delivery of facilities and services coincides with the demands for the facilities created by the development.
- (d) Whenever the City Council determines that levels of service in excess of these minimum standards are necessary in order to promote the orderly development of the City, the owner shall qualify for reimbursement for any costs in excess of the minimum levels of service through City participation, to the extent funds are available by a pro rata reimbursement policy or other means adopted by the City.

ADEQUACY OF SPECIFIC FACILITIES

- (a) All lots to be platted shall be connected to a public water system which has capacity to provide water for domestic use and emergency purposes, including adequate fire protection.
- (b) All lots to be platted shall be served by an approved means of wastewater collection and treatment. The City Engineer shall be responsible for determining the approved means of wastewater collection and treatment. The City may require the phasing of development and/or improvements in order to maintain adequate wastewater capacity.
- (c) Proposed roads shall provide a safe, convenient and functional system for vehicular, bicycle and pedestrian circulation and shall be properly related to the applicable thoroughfare plan and any amendments thereto, and shall be appropriate for the particular traffic characteristics of each proposed subdivision or development. New subdivisions shall be supported by a thoroughfare network having adequate capacity, and safe and efficient traffic circulation. Each development shall have adequate access to the thoroughfare network.
- (d) Stormwater management and drainage facility improvements serving new development shall be designed to prevent overloading the capacity of the downstream drainage system and to protect downstream facilities and properties from flood risk or environmental quality degradation and to maximize the preservation of natural floodplain features. The City may require the phasing of development, the use of control methods such as retention, detention, the construction of off-site drainage improvements, storm water best management practices or drainage impact fees in order to mitigate the impacts of the proposed subdivision.

IMPROVEMENT OF ADJACENT AND ABUTTING EXISTING STREETS AND UTILITIES

In the case of existing adjacent or abutting roads, the City may require that the entire right-of-way be dedicated and/or improved to the City's design standards, based upon factors including the impact of the proposed subdivision on the road, safety to the traveling public, geometric conflicts, capacity interruptions, condition, structural capability, effects on life expectancy and maintenance requirements of the road, the impact of the proposed subdivision on other roads, the timing of this development in relation to need for improving the road, the impact of the traffic on the road and City's roadway system as a whole.

TIMING OF DEDICATION AND CONSTRUCTION

- (a) The City shall require an initial demonstration that a proposed subdivision shall be adequately served by public facilities and services at the time for approval of the first development application that portrays a specific plan of development,

including but not limited to a petition for establishing a planned development zoning district, or other overlay zoning district; or a developer's agreement; or an application for a preliminary or final plat.

- (b) The obligation to dedicate rights-of-way for or to construct one or more public works improvements to serve a new subdivision may be deferred until approval of a subsequent phase of the subdivision, at the sole discretion of the City Engineer, upon written request of the property owner, or at the City's own initiative. As a condition of deferring the obligation, the City may require that the subdivider include provisions in the developer's agreement, specifying the time for dedication of rights-of-way for or construction of public works improvements serving the subdivision.

SECTION 2. PROPORTIONALITY DETERMINATION

- (a) Prior to a decision by the Planning and Zoning Commission on a preliminary plat application, or if no preliminary plat application is required, on a final plat application, or any other application for which an exaction requirement is approved as a condition of approval, the City Engineer shall prepare a written statement affirming that each exaction requirement to be imposed as a condition of plat approval or permit approval is roughly proportionate to the demand created by the subdivision or development on the applicable public facilities system of the City, taking into consideration the nature and extent of the development proposed. In making this determination, the City Engineer may consider:
 - (1) categorical findings and recommendations of the North Central Texas Council of Governments in developing standard specifications for public infrastructure improvements and storm water management;
 - (2) the proposed and potential use of the land;
 - (3) the timing and sequence of development in relation to availability of adequate levels of public facilities systems;
 - (4) impact fee studies, traffic impact studies, both geometric and capacity oriented, drainage studies; fire protection, consumption and irrigation water needs; solid or liquid waste collection and disposal or other studies or standards that measure the demand for services created by developments and the impact on the city's public facilities system;
 - (5) the level of service and functionality of both on-site and off-site public infrastructure improvements in serving the proposed subdivision or development;

- (6) the degree to which public infrastructure improvements necessary to serve the proposed subdivision are supplied by other developments;
 - (7) the anticipated participation by the City in the costs of necessary public infrastructure improvements;
 - (8) the degree to which acceptable private infrastructure improvements to be constructed and maintained by the applicant will offset the need for public infrastructure improvements;
 - (9) any reimbursements for the costs of public infrastructure improvements for which the proposed subdivision is eligible; and/or
 - (10) any other information relating to the impacts created by the proposed subdivision or development on the city's public facilities systems.
- (b) Based upon the proportionality determination, the City Engineer shall affirm that the exaction requirements of the Subdivision Ordinance, or other ordinance requiring the permit, as applied to the proposed subdivision or development, do not impose costs on the applicant for public infrastructure improvements that exceed those roughly proportionate to the impact of the proposed subdivision or development.
- (c) The City Engineer may require that the applicant, at its expense, submit any information or studies that may assist in making the proportionality determination.

SECTION 3. DEFINITIONS

For purposes of this ordinance, the following terms have the following definitions:

EXACTION REQUIREMENT: a requirement imposed as a condition for approval of a development plat, preliminary plat, final plat, re-plat, building permit, planned development district or other development permit application to:

- (1) dedicate an interest in land for a public infrastructure improvement;
- (2) construct a public infrastructure improvement; or
- (3) pay a fee in lieu of constructing a public infrastructure improvement.

PUBLIC INFRASTRUCTURE IMPROVEMENT: a water, wastewater, roadway, drainage or park facility that is a part of one or more of the City's public facilities systems.

PUBLIC FACILITIES SYSTEM: with respect to water, wastewater, roadway, drainage or parks, the facilities owned or operated by or on behalf of the City to provide services to the public, including existing and new developments and subdivisions.

SECTION 4. ROUGH PROPORTIONALITY DETERMINATION

- (a) The Planning and Zoning Commission and City Council shall consider the City Engineer's report concerning the proportionality of the exaction requirements in making a decision on a plat application. The Commission and the City Council may consider the City Engineer's report in granting a variance to the requirements of the Subdivision Ordinance.
- (b) The City official responsible for issuing a permit for which an exaction requirement is imposed as a condition of approval shall consider the City Engineer's report concerning the proportionality of the exaction requirements in making its decision as to whether to grant the permit.

SECTION 5. ROUGH PROPORTIONALITY APPEAL

- (a) An applicant for a preliminary or final plat or for a permit which imposes an exaction requirement as a condition of approval may file an appeal to contest any exaction requirement, other than impact fees, imposed as a condition of approval or in which the failure to comply is grounds for denying the plat application pursuant to the Subdivision Ordinance. The procedures for appeal of a rough proportionality determination apply to all City permits.
- (b) The purpose of a proportionality appeal is to assure that an exaction requirement imposed on a proposed plat or development as a condition of approval does not result in a disproportionate cost burden on the applicant, taking into consideration the nature and extent of the demands created by the proposed subdivision or development on the City's public facilities systems.

SECTION 6. APPEALS PROCEDURE

- (a) An applicant for a preliminary or final plat or an applicant seeking approval for any other permit or zoning for which an exaction requirement is imposed shall file a written appeal with the City Administrator within ten (10) days of the date the Planning and Zoning Commission or the city official responsible for issuing the permit takes action applying the exaction requirement. This may include denial of the permit or plat. The applicant shall submit fifteen (15) copies of the appeal.

- (b) A separate appeal form shall be submitted for each exaction requirement for which relief is sought. The City Administrator shall forward the appeal to the City Council for consideration.
- (c) The applicant may request postponement of consideration of the applicant's plat application by the City Council pending preparation of the study required by subsection (f), in which case the applicant shall also waive the statutory period for acting upon a plat for the time necessary for the City Council to decide the appeal.
- (d) No developer's agreement may be executed by the City until the time for appeal has expired or, if an appeal is filed, until the City Council has made a determination with respect to the appeal.
- (e) The appeal shall state the reasons that application of the exaction requirement is not roughly proportional to the nature and extent of the impact created by the proposed subdivision or development on the City's public facilities systems and does not reasonably benefit the proposed subdivision or development.
- (f) The appellant shall submit to the City Engineer fifteen (15) copies of a study in support of the appeal that includes, with respect to each specific exaction requirement appealed, the following information within 30 days of the date of appeal, unless a longer time is requested:
 - (1) total capacity of the City's water, wastewater, roadway, drainage, or park system, as applicable, to be utilized by the proposed subdivision or development, employing standard measures of capacity and equivalency calculations relating the type of development proposed to the quantity of system capacity to be consumed by the subdivision. If the proposed subdivision is to be developed in phases, such information also shall be provided for the entire development, including any phases already developed;
 - (2) total capacity to be supplied to the City's public facilities systems for water, wastewater, roadway, drainage or parks, as applicable, by the exaction requirement. This information shall include any capacity supplied by prior exaction requirements imposed on the development;
 - (3) comparison of the capacity of the applicable City public facilities systems to be consumed by the proposed subdivision or development with the capacity to be supplied to such systems by the proposed exaction requirement. In making this comparison, the impacts on the City's public facilities systems from the entire subdivision or development shall be considered;

- (4) the amount of any City participation in the costs of oversizing the public infrastructure improvements to be constructed by the applicant in accordance with the City's requirements;
 - (5) comparison of the minimum size and capacity required by City standards for the applicable public facilities systems to be utilized by the proposed subdivision or development with the size and capacity to be supplied by the proposed exaction requirement; and
 - (6) any other information that shows the alleged disproportionality between the impacts created by the proposed development and the exaction requirement imposed by the City.
- (g) The City Engineer shall evaluate the appeal and supporting study and shall make a recommendation to the City Council based upon the City Engineer's analysis of the information contained in the study and utilizing the same factors considered by the Engineer in making the original proportionality determination.

SECTION 7. CITY COUNCIL DECISION

- (a) The City Council shall decide the appeal within 30 days of the date of final submission of any evidence by the applicant. Upon receipt of the final submission of evidence from the applicant, the City Administrator shall schedule a time and date for the City Council to consider the appeal and shall cause the applicant to be notified at the address specified in the appeal form of the time, date and location at which the City Council shall consider the appeal.
- (b) The applicant shall be allotted time, not to exceed 30 minutes, to present testimony at the City Council meeting. The Council shall base its decision on the criteria listed in Sections 2(a) and 6(f) and may:
- (1) deny the appeal and impose the exaction requirement in accordance with the City Engineer's recommendation or the Planning and Zoning Commission's decision on the plat or other development application; or
 - (2) grant the appeal, and waive in whole or in part an exaction requirement to the extent necessary to achieve proportionality; or
 - (3) grant the appeal, and direct that the City participate in the costs of acquiring land for or constructing the public infrastructure improvement.
- (c) In deciding an appeal, the City Council shall determine whether application of the exaction requirement is roughly proportional to the nature and extent of the impact created by the proposed subdivision on the City's public facilities systems for water, wastewater, roadway, drainage, or park facilities, as applicable, and

reasonably benefits the subdivision. In making such determination, the Council shall consider:

- (1) the evidence submitted by the applicant;
 - (2) the City Engineer's report and recommendation, considering in particular the factors identified in Sections 2(a) and 6(f); and
- (d) The City Council may require the applicant or the City Engineer to submit additional information that it deems relevant in making its decision.

SECTION 8.

ACTION FOLLOWING DECISION OF CITY COUNCIL

- (a) If the City Council finds in favor of the applicant and waives the exaction requirement as a condition of plat approval, or modifies the exaction requirement to the extent necessary to achieve rough proportionality, the applicant shall resubmit the plat application to the Planning and Zoning Commission or City official responsible for issuing the permit within 30 days of the date the City Council takes action, with any modifications necessary to conform the plat with the City Council's decision. The applicant shall not be deemed to have prevailed in the event that the City Council modifies the exaction requirement.
- (b) If the City Council finds in favor of an applicant for any other permit and waives the exaction requirement as a condition of permit approval, or modifies the exaction requirement to the extent necessary to achieve rough proportionality, the applicant shall resubmit the permit application to the responsible official within 30 days of the date the City Council takes action, with any modifications necessary to conform the application with the City Council's decision. Failure to do so will result in the expiration of any relief granted by the City Council.
- (c) If the City Council denies the appeal and the applicant has executed a waiver of the statutory period for acting upon a plat, the City shall place the plat application on the agenda of the Planning and Zoning Commission within 30 days of the City Council's decision.
- (d) If the rough proportionality appeal was submitted appealing the imposition of an exaction requirement for a plat application, and City Council grants relief to an applicant but the applicant fails to conform the plat to the City Council's decision within the 30 day period provided, the relief granted by the City Council on the appeal shall expire.
- (e) If the plat application is modified to increase the number of residential dwelling units or the intensity of non-residential uses, the City Administrator or City Engineer may require a new study to validate the relief granted by the City Council.

- (f) If the plat application for which relief was granted is denied on other grounds, a new appeal shall be required on any subsequent application.

SECTION 9. APPEAL OF CITY COUNCIL DECISION

An applicant may appeal the decision of the City Council to the county or district court of the county in which the development is located within 30 days of the date that the Council issues its final decision. In the event that the applicant prevails in such action, the applicant will be entitled to attorneys' fees and costs, including expert witness fees.

SECTION 10. SAVINGS CLAUSE

This ordinance shall be cumulative of all provisions of ordinances of the City of Aurora, Texas, except where the provisions of this ordinance are in direct conflict with the provisions of such ordinances, in which event the conflicting provisions of such ordinances are hereby repealed.

SECTION 11. CONSTITUTIONALITY

It is hereby declared to be the intention of the City Council that the phrases, clauses, sentences, paragraphs and sections of this ordinance are severable, and if any phrase, clause, sentence, paragraph or section of this ordinance shall be declared unconstitutional by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this ordinance, since the same would have been enacted by the City Council without the incorporation in this ordinance of any such unconstitutional phrase, clause, sentence, paragraph or section.

SECTION 12. SEVERABILITY

All rights and remedies of the City are expressly saved as to any and all violations of the provisions of the Subdivision Ordinance, as amended, or any other ordinances affecting subdivision regulations which have accrued at the time of the effective date of this ordinance; and, as to such accrued violations and all pending litigation, both civil and criminal, whether pending in court or not, under such ordinances, same shall not be affected by this ordinance but may be prosecuted until final disposition by the courts.

SECTION 13. PENALTY

Any person or corporation violating any of the provisions of this Ordinance shall upon conviction be fined a sum not to exceed two thousand dollars (\$2,000.00) per day

and each and every day that the provisions of this Ordinance are violated shall constitute a separate and distinct offense.

In addition to the said penalty provided for, the right is hereby conferred and extended upon any property owner owning property in any district where such property owner may be affected or invaded by a violation of the terms of the Ordinance to bring suit in such court or courts having jurisdiction thereof and obtain such remedies as may be available at law and equity in the protection of the rights of such property owners.

**SECTION 14.
EFFECTIVE DATE**

This ordinance shall be in full force and effect from and after its passage, be it so ordained.

PASSED AND APPROVED on the _____ day of _____, 2015.

Terry L. Solomon,
Mayor

ATTEST:

Dr. Toni L. Wheeler, PhD, MPA, PMP
City Administrator